

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





74-1730

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

B

CITIZENS FOR BALANCED ENVIRONMENT  
AND TRANSPORTATION, INC., successor  
in interest of Committee to Stop  
Route 7, et al.,

Plaintiffs-Appellants,

v.

JOHN A. VOLPE, et al.,

Defendants-Appellees.

CIVIL APPEAL  
DOCKET NO. 74-1730

On Appeal From  
District Court  
of Connecticut,  
Newman, J., Dkt. 15,054

APPELLANTS' APPENDIX

July 3, 1974

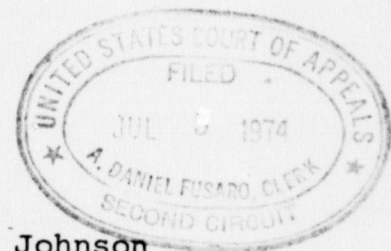
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PAGINATION AS IN ORIGINAL COPY



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U. S. Route 7 almost to Kent, Connecticut  
(north of New Milford) (subject to judi-  
cial notice only)

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### Note:

The Appendix is in this limited form since the Court, when granting a preference on June 25, 1974, permitted Appellants to rely on the original record, and dispense with an Appendix (except for the Opinion appealed from). Counsel's copies of exhibits have been duplicated due to shortness of time.



UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

CITIZENS FOR BALANCED ENVIRONMENT	x	
AND TRANSPORTATION, INC.,		
successor in interest of Committee	:	
to Stop Route 7, et al,	:	
	:	
Plaintiffs	:	
	:	
v.	:	Civil Action
	:	No. 15,054
VOLPE, et al,	:	
	:	
Defendants.	x	

PLAINTIFFS' MOTION TO EXTEND  
THE GEOGRAPHIC SCOPE OF INJUNCTION

Plaintiffs move for a preliminary and permanent enlargement of the present permanent injunction so as to enjoin any construction, or steps toward construction, in Connecticut, of the new Route 7 expressway north of Danbury prior to the preparation of a proper and adequate environmental impact statement under the National Environmental Policy Act, 42 U.S.C. 4321. ("NEPA")

The grounds for this motion are set forth in the accompanying memorandum and affidavits, but, in essence, are:

1. The existing injunction is insufficient to accomplish its purpose in that the State now seeks to build the new Route 7 expressway north of Danbury. Such action, though not presently enjoined, will create additional traffic, make improvement of mass transportation less likely, and so affect decisions as to the "need" for an expressway south of Danbury.

2. The proposed additional construction is a major Federal action significantly affecting the environment under NEPA.

3. The proposed expressway is unitary, running from Norwalk to New Milford; and Federal money has already been used for planning and construction of portions of said expressway, including portions north of Danbury.

4. The State has taken all steps necessary to qualify for Federal funding of the proposed extension, but, nevertheless, plans to use State money in order to avoid the requirements of NEPA.

5. Permitting the proposed construction north of Danbury will, in effect, undermine the presently existing injunction.

6. The failure of the State to prepare an environmental impact statement under Governor Mes-ill's Executive Order No. 16.

This motion is based upon:

1. The previous record in the present case.
2. The decisions in the present case.
3. The accompanying affidavits of

Diane Haavind  
Haynes N. Johnson  
William B. Morrill  
Robert Morris  
William Niering.

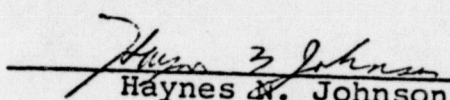
4. The related decision in Conservation Society v. Secretary, 5 ERC 1683 (D.Vt. 1973).

5. Regulations of the Federal Highway Administration.



6. Testimony planned to be adduced at the hearing  
on this motion.

A prompt hearing is respectfully requested.

  
Haynes W. Johnson  
Attorney for Plaintiffs  
460 Summer Street  
Stamford, Connecticut 06901  
203 - 327-2650

Apr 3

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

CITIZENS FOR BALANCED ENVIRONMENT x  
AND TRANSPORTATION, INC.,  
Successor in interest of Committee :  
to Stop Route 7, et al, :

Plaintiffs Civil Action  
: No. 15,054

v.

VOLPE, et al,

Defendants. x

Pls. Ex. JJJ

STATE OF CONNECTICUT )  
 )  
COUNTY OF NEW LONDON )

WILLIAM A. NIERING, being duly sworn, deposes and  
says that:

1. I am Professor of Botany of Connecticut College and  
Director of the Connecticut Arboretum. I received my master's  
degree in biology from Penn State University and my PhD  
from Rutgers University in plant ecology. I have been  
teaching ecology and doing research at Connecticut College  
since 1952. My research has included work on the wetlands  
of Connecticut, research on tidal marshes, surveys of the  
marshes in Connecticut, and work with the National Park  
Service in doing a wetlands study of the United States. I  
am a member of the Ecological Society, of the American  
Association for the Advancement of Science, and the Botani-  
cal Society of America. I have received in the Ecological  
Society, along with my colleague, Dr. Whittier, the Mercer  
Award in 1967 which is given for the best paper published  
in ecology. In 1968 I was on leave from Connecticut College,  
acting as associate director of the Environmental Biology



program at the National Science Foundation. I have published over 50 different research articles, including the books, "Nature and the Metropolis", and "The Life of the Marsh". A more detailed statement of my background is attached as Exhibit 22.

2. I have personally examined the location of the proposed Route 7 Expressway between Danbury and New Milford (Projects 34-124 and 18-95) and have compared it to the plans for the Expressway so as to locate the Expressway relative to the Still River and Still River floodplain. For reasons to be set forth below, I believe that, if construction takes place, the result will have a serious and most significant adverse effect upon the environment. In particular, it will substantially destroy some three miles of flood plain and involve building some two miles of river channels. The channelization will cause modification of remaining floodplain areas of the river.

#### The Still River

3. The Still River is a tributary of the Housatonic River flowing northward for some 15 miles from Danbury through the Town of Brookfield and New Milford. The city of Danbury, a major center of population, has a major influence on the river in lowering water quality (see "Water Resources Inventory of Connecticut", Part 6, Upper Housatonic River Basin", Conn. Water Resources Bulletin No. 21 - 1972; portions of which are attached as Ex. 23.)

### The Floodplain

4. As is typical along a riverine system such as the Still River there has developed a floodplain varying from about 1/4 to 1/2 mile in width. Here the sediments include river alluvium which is underlain by stratified-drift aquifers reaching a maximum depth of 120 feet. This drift represents the most important water-holding strata in the basin (see Plate B Part I of Bulletin No. 21 previously mentioned). This basic soil type river alluvium is included as one of those characterizing the inland freshwater wetland and protected from encroachment by the Connecticut Inland Wetlands Act, Public Act 72-155. Since the glacial ice receded from this region, the river has been down cutting and meandering back and forth across this flood plain. Any major encroachment on the floodplain, such as the Expressway and the river channelization, will alter this basic geomorphic process as well as other water holding qualities associated with this liquid asset. The current meandering course tends to slow the rate of flow and adds a tremendous surface area of floodplain. This serves to recharge ground water into the underlying stratified-drift aquifer and so conserve fresh water. The meandering course and the broad expanse of floodplain vegetation types also play a vital role in flood control and pollution filtration.



### Vegetation Identifying Floodplains

5. There has evolved a mosaic of floodplain-identifying plant communities (floodplain forests, shrub swamps and marshes) extending for varying distances back from the river. A stand of large trees up to 3 feet in diameter tends to dominate along the river banks. Red maple is the most important species, along with such associated species as elm, ash, sycamore and black willow, all adapted to periodic flooding. Extending hundreds of feet back from the river there has also developed extensive shrub swamps, including dense thickets of willow and red osier dogwood. Where openings occurred, favored in part by the river's periodic flooding and scouring, annual plants are most important colonizing the recently deposited fertile alluvium. Here smartweeds, wild balsam apple and a diversity of wetland species prevail. Locally, in permanently flooded depressions, buttonbush shrub swamps occur. In other such wet areas extensive marshy areas dominated by tussock sedge are the dominant aspect. Here other marsh species such as water plantain, woolgrass (Scirpus cyperinus) and soft rushes (Juncus effusus) are typical forms. Such areas with open standing water are especially prime duck feeding, nesting and resting areas. A diversity of other marsh animals such as muskrats also frequent such wetland sites.

6. That all of these vegetation types are adapted to flooding can be seen on the aerial photos of February 3, 1973 and August 2, 1973 where the flooding also extends into certain agricultural lands still in use within the basin.

Such areas have long been recognized as among the most naturally productive agricultural lands in the world enriched periodically by the flooding river.

#### Prior Partial Destruction of the Floodplain

7. Not all of the floodplain is in its natural vegetation cover. Some positions have already been exploited by man. An extensive sand and gravel operation is located in one area. Several roads cross the floodplain. Developments along Route 7 have resulted in some filling, and current filling, operations are in progress.

#### The Value of Floodplains

8. Floodplains are now recognized by ecologists as playing an extremely vital role in the hydrologic cycle. Flood prevention abatement and ground water recharge are especially important. In addition they serve as pollution filters, their most recently recognized role. Current data suggest that the Still River, and especially that portion to be highly modified by highway construction, is serving this vital role (see Ex.23 ).

9. The following ecological roles are being served by the Still River and its associated vegetation.

##### a) Ground water recharge -

The major portion of the basin (to be covered by the expressway) is underlain by stratified-drift, glacial deposits, which are considered the most important aquifers within the region. They range to a depth of 80 feet within the area of projects 34-124 and 18-95. As indicated on Geohydrographic Map of Upper Housatonic River Basin Plate B Part 1 Bull. 21,



the floodplain where the projects are proposed contain aquifer materials capable of high water transmissivity (2000 to 8000 feet squared per day). Wherever such underlying deposits occur within the State it is recommended that such areas be preserved as free as possible from disturbance so that these water bearing deposits may be available at some future period when it is predicted that this region will need additional water supplies.

b) Pollution Filtration -

It has now been documented in the ecological literature (Alcovy River Floodplain in Georgia and Tinicum Marshes in Pennsylvania) that floodplains and their associated vegetation play a major role in filtering out pollutants. (See Conn. Arboretum Bull. 19 for specific details, page 5).

It is of special interest that data already available on the Still River (Bull. 21 previously cited p. 35) strongly indicated that the section of the Still River north of Danbury including the project area is currently serving as a pollution filter. Data from various stations on the Still River show low oxygen levels (2.3 mg/l) in the river just north of Danbury. However, by the time it had flowed northward through the proposed highway construction area it had recovered to a relatively high oxygen level (12.3 mg/l) where it enters the Housatonic. In other words the polluted waters from the Sympaug River (a tributary of the Still River) and other sources of pollution in the Danbury area have been greatly reduced by the time the water enters the Housatonic.

4229

c) Flood Control -

Floodplains are geomorphic safety valves that have evolved in river systems. They are specifically designed to accommodate flooding during peak periods of flow. This is the role currently being served by this basin, especially the section north of Danbury where the highway construction is proposed. This is strikingly documented by the aerial photographs of the floodplain during a flooding period. (Feb. 3, 1973) Ecologists are now recommending that all encroachments on floodplains be minimized since river systems within highly urbanized environments are receiving larger volumes of runoff than ever before. This is due to the fact that streets, buildings and parking lots waterproof the land, thus destroying the normal soak-in surface. Every acre of floodplain destroyed by filling, as in the case of highway construction, means greater flooding potential downstream since less water can be held at any one time on the floodplain. In other words the safety valve is reduced.

Effect of Encroachments

10. Any major encroachments on this natural biological system such as the major highway construction being proposed will seriously degrade the pollution filtration and hydrologic roles. In fact, one can predict a further degradation of the system resulting from the following environmental insults in highway construction; several miles of the



stream will be relocated and put into about two miles of channels. River channelization has recently become a national issue since the hydrological and biological qualities of a river basin are often destroyed by digging a straight entrenched channel for the river course and bypassing the many meanders that previously carried the river waters across the floodplain. As a result of channelization, the water is carried at an increased velocity, greater erosion results, and flood control and pollution filtration qualities are decreased. In other words the pollution levels entering the Housatonic will be increased since much of the floodplains pollution removal aspects will have been destroyed.

Channelization can also result in the loss of ground water recharge. Drilled wells within the surrounding area may be affected to the point that water flow will be decreased or the original water bearing strata are no longer yielding water. Channelization may also jeopardize future commercial wells designed to supply many households.

#### Conclusion

This affidavit has covered some of the significant environmental aspects associated with the construction of a major highway within a floodplain. Ecologically it is unsound to encroach upon such a wetland ecosystem that is currently playing such a vital role in the biosphere.

*William A. Niering*  
William A. Niering

Subscribed and sworn to  
before me this 4th day  
of December, 1973.

*Raymond Melancon*

APR 11

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

U.S. DISTRICT COURT  
HARTFORD, CONN.  
CLERK

MAY 10 2 28 PM '74

FILED

CITIZENS FOR BALANCED :  
ENVIRONMENT AND TRANSPORTATION, :  
INC., successor in interest of :  
Committee to Stop Route 7, :  
et al :

V. :

CIVIL NO. 15,054

JOHN A. VOLPE, ET AL :

MEMORANDUM OF DECISION  
ON PLAINTIFFS' MOTION TO EXTEND INJUNCTION

This second phase of the Route 7 litigation in Connecticut requires decision as to whether a proposed highway from Danbury to New Milford is a "Federal action" within the meaning of the National Environmental Policy Act (NEPA), 42 U.S.C. § 4332(2)(C), in which event the preparation of an environmental impact statement (EIS) is required. In the first phase of this litigation an unincorporated association of area residents obtained an injunction preventing construction of Route 7 between Norwalk and Danbury until federal officials had complied with NEPA by preparing an EIS "covering at least a span from Norwalk to Danbury." Committee to Stop Route 7 v. Volpe, 346 F.Supp. 731, 742 (D. Conn. 1972).<sup>1/</sup>

An incorporated and renamed association of area residents, which is successor in interest to one of the original plaintiffs, has now moved to extend the scope of the original injunction to bar construction between Danbury and

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New Milford until adequate compliance with NEPA. The motion was precipitated by the state defendants advertisement of bids for construction of projects 34-124 and 18-95 in the Towns of Danbury and Brookfield. These projects are to be part of relocated Route 7 north of Danbury. Plaintiffs urge that the portion of relocated Route 7 from Danbury to New Mildord is a "Federal action" within the meaning of NEPA because of (a) federal funds already spent, (b) the State's eligibility for future federal funding, and (c) the relationship between the portion of relocated Route 7 north of Danbury and the portion south of Danbury, which all concede is a "Federal action."<sup>2/</sup> These contentions are appropriate for decision, whether the pending motion is considered solely as an effort to enlarge the prior injunction or as a new suit challenging the proposed new construction in an area not covered by the prior injunction. The state defendants oppose the motion primarily on the ground that the state proposes to use only state funds to construct the highway from Danbury to New Milford.

I.

Federal Funding

The principal federal funds relied on by plaintiff are those that have been used to construct a portion of I-84 in Danbury and a spur that connects I-84 to Route 7 north of Danbury. I-84 is a limited access expressway running in an east-west direction through Danbury. The state's plans call for reconstructing Route 7 to link up with I-84 from south of

Danbury at a point just west of Danbury and to continue north from I-84 at a point just east of Danbury. For the three miles between the two points where Route 7 will intersect I-84, the highway will be numbered both I-84 and U.S. 7. Approximately \$40 million of federal funds was used for this portion of I-84.

The overlap of the two route designations does not mean that Route 7 north of Danbury is a federal highway for NEPA purposes. Congress has not purported to apply NEPA requirements to every highway that connects with a federally-funded highway, and the fact that the connection here involves a three-mile overlap makes no difference.

Plaintiffs direct more serious attention to the spur north of I-84, since this spur will be the southern terminus of the new Route 7 north of Danbury. Plaintiffs cite particularly \$465,000 of "Federal-aid primary" money, 23 U.S.C. § 103(b), used to build a bridge at the northerly end of the spur. The spur is currently connected by two temporary ramps to the presently existing Route 7. State plans call for the removal of these ramps once the new Route 7 has been built from the spur northward. Once that occurs, cars travelling north from Danbury on new Route 7 will cross the federally-funded bridge and remain on the state-funded portion of new Route 7 for about one mile until the first exit is reached. Similarly cars coming south toward Danbury on new Route 7, after passing an exit one mile north of the



bridge, will have to cross the bridge and continue on into I-84. Plaintiffs' contention is that the portion of Route 7 that the state proposes to build north of Danbury does not merely intersect with a federally-funded highway, it becomes a federal highway because its southern end (the spur north of Danbury) is a federally-funded road.

Whether a state-funded road is nonetheless a federal road for NEPA purposes when it is merely one segment of a federal highway is an issue to be considered subsequently in this opinion. But no matter how strict an approach one takes to "segmenting," cf. Named Individual Members of San Antonio Conservation Society v. Texas Highway Department, 446 F.2d 1013 (5th Cir. 1971) (hereafter "San Antonio"), it is simply unrealistic to consider the 14.4-mile span from Danbury to New Milford to be a "segment" improperly broken off from the federally-funded spur of less than one-quarter of a mile.

Nor does it matter that the spur and the 14-mile span become a unit from which there is no exit along the southernmost mile. Most roads link up with other roads. When I-84 was constructed through Danbury, it was obviously necessary to construct a means of connecting that highway with existing Route 7. That is what the spur and the temporary ramps accomplish. They have a use entirely independent of any future use they might serve as the southern end of new Route 7 above Danbury. Once the state builds the

new Route 7 above Danbury, it is entitled to link up with the connection between I-84 and old Route 7, and neither this connection nor the elimination of the ramps to the replaced road federalizes the new state-funded road.<sup>3/</sup>

The only other federal funding indicated is a sum less than \$50,000 of federal highway planning and research funds that were used in connection with the planning of the proposed road. The size of this expenditure and the totally preliminary purposes of the funds are too insignificant to render the proposed multi-million dollar highway a federal action.<sup>4/</sup>

James River and Kanawha Canal Parks, Inc. v. Richmond Metropolitan Authority, 359 F.Supp. 611, 634, 636, n. 72 (E.D. Va. 1973) (hereafter "James River").

## II.

### Eligibility for Federal Funding

More substantial is plaintiffs' claim that NEPA compliance is required because the portion of new Route 7 between Danbury and New Milford has been eligible for federal funding. State officials agree with plaintiffs that the conduct of corridor and design hearings were carried out pursuant to state requirements that are intended to be as rigorous as federal requirements. The purpose, explicitly acknowledged in the testimony of the state's deputy commissioner of transportation, is to preserve eligibility for federal funding, if anticipated state funds do not materialize.<sup>5/</sup> The state insists, however, that a decision



to rely on state funding for the Danbury-New Milford portion was made back in the 1960's and has been consistently adhered to. But the deputy commissioner agrees that even though state funds are to be used for the two projects of the Danbury-New Milford portion currently advertised for bids, the state remains eligible for federal funds to construct other projects within the Danbury-New Milford portion.<sup>6/</sup>

Plaintiffs' contention that eligibility for federal funding requires NEPA compliance draws support from three decisions, La Raza Unida v. Volpe, 337 F.Supp. 221 (N.D. Cal. 1971); Sierra Club v. Volpe, 351 F.Supp. 1002 (N.D. Cal. 1972), and James River, supra. La Raza Unida ruled that a highway becomes subject to "various federal statutes and regulations" at the point when location approval has been given by the Federal Highway Administration, see Policy and Procedures Memorandum (PPM) 20-8, whether or not the state has received or even sought any federal funds. While NEPA compliance was not explicitly adjudicated, 337 F.Supp. at 234, n. 8, the opinion emphasizes the importance of the environmental policies protected by NEPA and also by 23 U.S.C. § 138.

The two subsequent cases have cited La Raza Unida approvingly, although they had no occasion to apply its holding. Sierra Club v. Volpe, supra, is really a segmenting case, the court concluding that a 6.3-mile portion of highway connecting long portions of federally-funded highways on either side could not be isolated from compliance with NEPA.

The court also relied upon the state's disavowal of expected federal funding after the litigation had started. James River held that the challenged highway was not a federal highway, in part because there had been no federal location approval. Nevertheless the court explicitly endorsed La Raza Unida, warning that if a state could avoid NEPA compliance by foregoing federal funds though eligible for them after location approval, a state could ignore environmental considerations in precisely those instances where they may be most important. 359 F.Supp. at 633.

Both the state and federal defendants here seek to avoid the import of La Raza Unida because of the fact that the state never sought nor received location approval from the FHWA for new Route 7 north of Danbury. However, there has occurred a federal approval of no less significance. Since Route 7 is part of the federal-aid primary system, the state was required to obtain federal approval of the general route to be followed by the reconstruction of Route 7. In the lexicon of federal highwayese this is known as "route revision." It was sought on November 28, 1969 (Pl. Ex. QQ) and granted on December 22, 1969 (Pl. Ex. RR).

The state defendants minimize the significance of this route revision approval. They contend that federal review of a proposed change in a federal-aid primary route "is only to determine if the highway system will retain its coordinated nature." However, Angelo Siccardi, the FHWA's division engineer, testified that the route revision approval



is not only sufficient to constitute location approval within the meaning of PPM 20-8, but in fact the submission required to obtain route revision approval is more detailed than that required to obtain location approval. Moreover, both the federal and state defendants agree that projects on the Danbury-New Milford span not yet advertised for bid remain eligible for federal funding. That could be so only if the design public hearing that was held in conformity with federal requirements was preceded by location approval. See PPM 20-8(4)(b)(1).

Arguably a difference between "route revision" approval and location approval can be found in the likely attitude of state officials at the time each is sought. Application for "route revision" approval simply implies that the state wants to insure its eligibility for federal funding. By seeking location approval, however, the state manifests at least a tentative decision to seek federal funding. However, neither step commits the state to build the highway at all, nor to use federal funds if the highway is built, and surely neither step commits the federal agency to supply federal funds. Moreover, determination of whether the federal government is sufficiently involved in a highway to make it a "Federal action" within the meaning of NEPA should not depend on the state of mind of a potential state applicant for funds.

Thus the issue must be faced as to whether NEPA compliance is required for a span of a relocated highway that

has received FHWA approval to remain on the federal-aid primary system when state highway officials have taken all steps necessary to remain eligible for federal funding but have elected to use only state funds for construction. Though recognizing the force of the argument developed in La Raza Unida, this Court concludes that while Congress no doubt has power to require NEPA compliance in such circumstances, the existing legislation simply does not do so.

The argument in La Raza Unida, as echoed in James River, is that if NEPA does not apply to highways that are eligible for federal funding, state officials will retain the discretion to decide at any time prior to construction whether to subject themselves to NEPA requirements. Since they need not elect to take federal funds until the end of the planning and design process, they can retain the option of foregoing federal funds if NEPA compliance appears onerous. Moreover, they do not lose federal money, since these funds are invariably reallocated to other federal-aid highways within the state.

The contentions are all sound, but with deference I do not understand how they establish that such an option on the part of a state constitutes the highway a "Federal action" within the meaning of NEPA. Solicitude for the environment cannot substitute for legislation. Congress has not applied NEPA to all highways that the states are eligible to fund with federal dollars. There is no indication in this



case that the FHWA has in any way induced Connecticut to reconstruct Route 7 between Danbury and New Milford. The "route revision" approval leaves the State entirely free to proceed with the reconstruction or forego it entirely.<sup>7/</sup>

The State's option to use federal dollars, though open virtually until the concrete is poured, is nonetheless an option, and the State's choice should not be restricted simply because one alternative of the option (using state dollars) might result in less adequate assessment of environmental considerations. If the highway is not a federal action, then a state's decision to avoid federal involvement cannot have the paradoxical effect of establishing federal involvement. Cases may arise where a state has developed such a partnership with the federal government in the joint decision-making as to whether and where to build a highway that a last-minute state election to use state money for construction cannot be permitted to erase the federal imprimatur already placed on the project. See San Antonio, supra, 446 F.2d at 1027. But that has not occurred here. "Route revision" approval plus continued conformity by state highway officials with federal requirements to preserve eligibility for federal funding is not sufficient to constitute a state-funded highway as a "Federal action" within the meaning of NEPA.

### III.

#### Segmenting

Though not a "Federal action" in and of itself, the

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Danbury-New Milford portion of new Route 7 would be subject to NEPA requirements if it is an integral part of a "Federal action" to build a highway from Norwalk to New Milford.

Plaintiffs insist this is precisely the case.

There is no doubt that the state plans to build a four-lane limited access expressway from Norwalk to New Milford. The Connecticut General Assembly authorized the planning for such a highway in 1957 and has since authorized what highway officials hope will be sufficient bonding authority. From the state's perspective it is one highway. But the state's intention, though relevant, does not determine federal consequences: The issue is whether the portion of new Route 7 between Danbury and New Milford has independent justification or whether construction of this span is dependent upon construction of the entire highway. See San Antonio, supra; Arlington Coalition v. Volpe, 458 F.2d 1323 (4th Cir. 1972); Sierra Club v. Volpe, supra; James River, supra.

Plaintiffs rely essentially on the many documents whereby the state highway officials expressed their intention to build a highway from Norwalk to New Milford. The state defendants rely on evidence that most of the traffic on the Danbury-New Milford portion will originate and terminate in these or intermediate towns. The federal defendants, though explicitly invited to express a view with respect to the administration of important federal statutes, have said only that this is a matter for the Court's decision.



There seems little doubt that until the enactment of NEPA and particularly the injunction issued in this litigation, the state highway officials made no particular distinction between new Route 7 south and north of Danbury. To the extent the highway was thought of in two parts, the dividing line was a point near Silvermine Road in Brookfield, north of Danbury. This apparently stemmed from the fact that the state legislature authorized bonding in two stages, and the first stage reached from Norwalk only to this point in Brookfield. See Conn. Gen. Stat. § 13a-185(b)(6).

Nevertheless, the demographic and traffic aspects provide sufficient independent justification for the Danbury-New Milford portion. The populations of Danbury and New Milford are 53,300 and 15,400, respectively. They are the principal population centers in the area in which each town is located. State highway officials believe the traffic between these communities, and between each of them and points along the Danbury-New Milford portion, justifies the construction of an expressway linking the towns. The manager of design for the Connecticut Department of Transportation testified that the Danbury-New Milford portion should be built whether or not the Norwalk-Danbury portion was built. That view may be debated, but ultimate decision on the point is not for this Court. It is sufficient that the independent justification for the Danbury-New Milford portion is reasonable and not a sham rationalization.

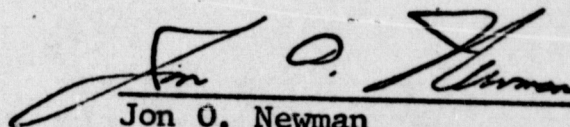
It is true, as plaintiffs contend, that construction of the portion north of Danbury will provide additional reason for construction of the portion south of Danbury. But as long as the northern portion has sufficient independent justification, it cannot be considered an indivisible part of a single highway, simply because its existence increases the likelihood of building the southern portion. Again, this factor may be relevant, but it is not decisive. Construction of the Danbury-New Milford portion without NEPA compliance is not an impermissible segmenting of the Norwalk-New Milford reconstruction of Route 7.

Though not specifically urged by plaintiffs, it might be appropriate in some cases to reach a conclusion of "Federal action" based on the cumulative effect of the various factors considered in this opinion. The federal dollars to build the spur that will connect new Route 7 to I-84 and the small amount of highway planning and research funds, the "route revision" approval by the FHWA and the state's continued eligibility for federal funding for later projects north of Danbury, and the relationship between the Danbury-New Milford portion and the Norwalk-Danbury portion may well be considered to have a greater total effect than any factor alone. The case law in this developing field has not identified with clarity the standard against which such a combination of factors is to be measured. Though the question on these facts is close, it does not appear that the federal



government has played a sufficient role in the reconstruction of highway between Danbury and New Milford to make this portion of Route 7 a "Federal action" within the meaning of NEPA. The preparation of an overall EIS for "the entire Route 7 corridor" has already been ordered. Conservation Society of Southern Vermont, Inc. v. Secretary of Transportation, 362 F.Supp. 627, 638 (D. Vt. 1973). Since the Danbury-New Milford portion is deemed not to be a "Federal action," an EIS for this specific portion need not be prepared prior to construction of the projects challenged by this motion to extend the prior injunction. Accordingly, that motion is denied.<sup>8/</sup>

Dated at Hartford, Connecticut, this 10 day of May, 1974.



Jon O. Newman  
United States District Judge

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## FOOTNOTES

1/ The injunction barred steps to construct "any portion of relocated Route 7." 346 F.Supp. at 742. That injunction was issued in the context of a suit challenging the proposed construction of two projects located between Norwalk and Danbury, projects 161-86 and 161-93. Subsequently the state defendants sought to amend the judgment to specify that construction between Danbury and New Milford would not require an EIS if only state funds were used. This Court declined to amend the judgment, considering that issue "not ripe for adjudication." Ruling on Motions to Amend Judgment p. 5 (Sept. 5, 1972). The ruling emphasized that determination of an appropriate span to be covered by an EIS should be made after submission of the EIS deemed sufficient by the appropriate agency with opportunity to review the agency's justification for the length of highway it has elected to consider.

In retrospect, it appears that two distinct issues were not adequately separated. The first is whether the EIS required before construction of Route 7 between Norwalk and Danbury need cover only that span or must also cover the entire span from Norwalk to New Milford. The second is whether there can be construction between Danbury and New Milford without preparation of an EIS for this span. Though the two questions are somewhat related, their resolution does not turn on identical factors. The first issue



will come before this Court when defendants seek to vacate the present injunction on the ground that an adequate EIS has been prepared. The second issue is squarely raised by the present controversy between the parties and requires adjudication now.

All parties appear to have assumed, correctly, that the original injunction, as clarified (?) by the subsequent Ruling on Motions to Amend Judgment, barred construction of relocated Route 7 between Norwalk and Danbury and did not resolve the issue now pending concerning construction between Danbury and New Milford.

2/ The portion south of Danbury, if built, is to be financed with federal funds. The issue in the first phase of this litigation was whether NEPA applied to a federally financed highway that had somewhat progressed through the planning stage prior to the effective date of NEPA.

3/ This is not to suggest that the construction of the spur is entirely lacking in NEPA significance. If NEPA had been in effect when the spur was built, an adequate EIS for I-84 would have had to give sufficient consideration to the environmental consequences of the spur, since it could be expected to fix with virtual certainty the southern terminus of any reconstruction of Route 7 north of Danbury.

4/ The two projects currently advertised for bids are estimated to cost \$38 million in state funds.

5/ Apparently the state defendants concede that the advertisement for bids on projects 34-124 and 18-95 without prior federal approval of plans, specifications and engineering, renders these projects no longer eligible for federal funding.

6/ Should the state ultimately seek federal funding for other projects between Danbury and New Milford, it may encounter the objection that NEPA compliance has been rendered impossible by state construction of state-funded projects in the absence of an EIS. If at that point an EIS covering only the remaining projects could not realistically assess the pros and cons of building a highway whose completion and location are already predestined by the existing construction, then federal funding may not be permissible. Apparently the state prefers not to avoid that serious risk by insuring compliance with NEPA now.

7/ No claim has been made that "route revision" approval is itself a "major Federal action" within the meaning of 42 U.S.C. § 4332(2)(C) requiring a prior EIS, even if in this case such approval had occurred after the effective date of NEPA.

8/ The Court declines to adjudicate the pendent claim of non-compliance with Governor Meskill's Executive Order No. 16. Neither this order, nor the recent state legislation, which the state defendants allege has superseded the executive order, Public Act 73-562, have been given any



authoritative state court interpretation, and it would be most inappropriate for a federal court to adjudicate the effect of a governor's executive order in light of subsequent state legislation. Cf. James River, supra, 359 F.Supp. at 623.

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

CITIZENS FOR BALANCED ENVIRONMENT :  
AND TRANSPORTATION, INC., successor :  
in interest of Committee to Stop :  
Route 7, et al :

Plaintiffs :

CIVIL ACTION  
NO. 15,054

v. :

VOLPE, et al :

Defendants :

P/s. Ex. CC

ADMISSIONS BY STATE DEFENDANTS

As a result of the pre-trial conference of January 4, 1974, the State Defendants admit the following relating to highway projects 34-124 and 18-95:

1. That the projects have a significant effect, under NEPA, upon the environment, if Federal projects.
2. That the projects will result in channelization of about 2 miles of the Still River.
3. That the projects are major actions as defined by NEPA. Inter alia, they involve:
  - a) construction of 4.46 miles of limited access expressway,
  - b) extending White Turkey Road about a mile and so by-passing a portion of old Route 7,
  - c) channelization of 1.9 miles of the Still River,
  - d) an estimated expenditure exceeding \$25,000,000.



4. That the projects are part of a planned New Route 7 Expressway from Norwalk to New Milford only, and that inter alia, they provide for:

- a) continuation north beyond the present projects to New Milford only,
- b) removal of the existing ramps at the southern end which now handle:
  - (i) northbound traffic leaving presently existing new Route 7 Expressway,
  - (ii) southbound traffic on old Route 7 which desires to enter the presently existing ~~new~~ Route 7 expressway to go south,
- c) no exit for northbound traffic on the presently existing new Route 7 Expressway until said traffic has travelled over about a mile on project 34-124.

5. That right of way has been acquired for continuation of the New Route 7 Expressway north of project 18-95 to New Milford in part.

6. That right of way adequate for a four-lane expressway has been acquired between Canaan, Connecticut, and the Massachusetts border, to by-pass Canaan.

7. That said projects are part of the primary arterial highway system in Connecticut.

8. Such projects of highway construction followed federal procedures in order to permit maximum flexibility for funding such construction, taking into account availability of Federal funds.

9. In general, since inadequate Federal funds exist for all projects, Federal funding can be shifted from one highway project to another without loss of Federal funds.

10. That the projects have been designed in accordance with Connecticut design specifications which meet or exceed federal design specifications.

11. (a) The State is now preparing a report and statement of environmental action regarding these two projects.

(b) That, as of the date the two projects were let out for bid, neither a draft nor a final impact statement had been prepared under NEPA.

It is further admitted:

(a) That defendant, John A. Volpe, has been succeeded by Claude A. Brinegar as Federal Secretary of Transportation.

(b) That defendant, A. Earl Wood, has been succeeded by Joseph B. Burns as Commissioner, Connecticut Department of Transportation.

For The State Defendants

Robert K. Killian  
Attorney General

By: \_\_\_\_\_  
Clement J. Kichuk  
Assistant Attorney General

CERTIFICATION

This is to certify that a copy of the foregoing document was mailed on January 25, 1974, postage prepaid, to each counsel of record.

\_\_\_\_\_  
Clement J. Kichuk  
Assistant Attorney General

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13, Conn. Ex. NN

STATE OF CONNECTICUT  
STATE HIGHWAY DEPARTMENT  
24 WOLCOTT HILL ROAD ... P. O. DRAWER A  
WETHERSFIELD 9, CONNECTICUT 06109

In reply refer to Unit 402  
January 21, 1966

Pls' Ex. NN

Honorable John M. Dempsey  
Governor of Connecticut  
State Capitol  
Hartford, Connecticut

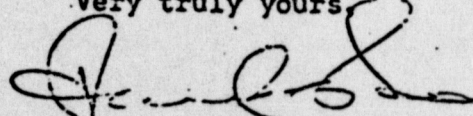
Honorable Harold M. Mulvey  
Attorney General  
State Capitol  
Hartford, Connecticut

Dear Sirs:

In the interest of public convenience, safety, and necessity, I am requesting your advice and consent to lay out and construct the Relocation of U.S. 7 and connectors thereto, between the Connecticut Turnpike in Norwalk and the Connecticut-Massachusetts State Line, as a limited access highway to allow access thereto only at highway intersections or at designated points as provided in Section 13a-59 of the 1963 Supplement to the General Statutes.

If there are any features of this proposal which you would like to discuss with me, I am, of course, at your service.

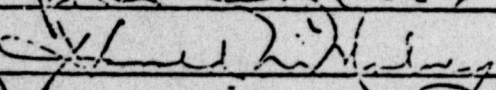
Very truly yours,

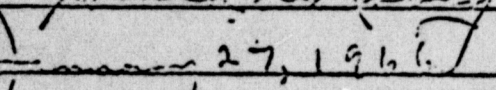


Howard S. Ives  
State Highway Commissioner

Approved  Governor

Date 

Approved  Attorney General

Date  27, 1966



INTERDEPARTMENT MAIL

DATE 5/28/60 99

TO: Mr. Edward J. DePina, Division Engineer	DEPARTMENT U. S. Bureau of Public Roads
FROM: Robert L. Hayer, Deputy Trans. Commissioner	DEPARTMENT Bureau of Highways
SUBJECT: Revision of Federal-aid Primary Route 2	

Approval by the Bureau of Public Roads is hereby requested of the revision of Federal-aid Primary Route 2 (US 7) in the towns of Wilton, Ridgefield, Danbury, Brookfield and New Milford. Federal-aid Primary Route 2 is located in the towns of Norwalk, Wilton, Redding, Ridgefield, Danbury, Brookfield, New Milford, Kent, Cornwall, Sharon, Salisbury, Canaan and North Canaan.

The revised detailed description of Federal-aid Primary Route 2 is as follows:

FAP Route 2 - From a point on I-95 in Norwalk at the intersection of West Avenue and I-95, thence northerly on proposed US 7 to the intersection with FAS 105 (Conn. 33) in the town of Wilton, thence northerly via new location to a point of intersection with I-84 in Danbury, thence from another point of intersection with I-84 in Danbury continuing northerly on proposed new location in Danbury and Brookfield to the intersection with existing US 7 in New Milford, thence via existing US 7 through Kent, Cornwall, Sharon, Salisbury, Canaan and North Canaan to the Conn. - Mass. S.L. enroute to Ashley Falls, Mass.

Urban Mileage	9.9
Rural Mileage	64.7
Total Mileage	74.6

	Urban	Rural	Total
Existing Official Length of FAP 2 -			
Revised " " " " "	9.4	64.6	74.0
	9.9	64.7	74.6
Net Mileage	+0.5	+0.1	+0.6

The cumulative effect of this revision of FAP 2 is an increase of 0.6 mile in the F.A. Primary System.

The following data is presented in justification of the revision of FAP 2 (US 7). This F.A. Primary Route 2 revision is requested in anticipation of the Conn. D.O.T.'s proposal to relocate and construct a section of US Route 7 from a point on FAS 105 (Conn. 33) in the town of Wilton, northerly terminating at a point on existing FAP 2 approximately 0.5 mile north of the intersection of Starrs Plain Road and existing US 7 in the town of Danbury and also at another location beginning at a point on existing FAP 2 in Danbury approximately 0.3 mile southwest of the Brookfield town line terminating at a point on existing US 7 in the town of New Milford. It is expected that the majority of traffic will be rerouted to these new locations.

This route is part of the State Highway Primary System and traverses an area that is predominantly rural in character and serves the manufacturing activities in the surrounding area. The population trend in the towns of Wilton, Redding, Ridgefield, Danbury, Brookfield and New Milford has been steadily rising as can be seen in the following tabulation.

P/1' Ex 90

Town	1950	1960	1967 Est.	% Increase 1950-60	% Increase 1960-67
Brookfield	1,635	3,405	7,600	101.7	123.2
Danbury	4,553	8,026	13,400	76.1	67.0
Ridgefield	2,037	3,359	5,700	64.9	69.7
New Milford	4,356	8,165	15,500	87.4	89.8
Danbury	30,337	39,352	47,300	29.8	20.1
New Milford	5,799	8,318	11,600	43.4	39.5

The 1968 ADT from Norwalk to Wilton was 18,000; from Wilton to Ridgefield was 14,500; from Ridgefield to Danbury 10,000; Danbury to Brookfield 14,700; Brookfield to New Milford 10,800; New Milford to Kent 5,000; through Sharon it was 1,000; through Canaan it was 1,100; and through North Canaan it was 2,200.

In conjunction with the revision of FAP Route 2, the revisions of FAS Routes 105, 117 and 119 and FAP Routes 6 and 11 are required in the towns of Wilton, Ridgefield, Danbury, New Milford and Brookfield.

Upon approval of the revision to FAP 2, the existing termini of FAS Routes 105, 117 and 119 and also FAP Routes 6 and 11 would no longer terminate on the F.A. highway system.

Therefore, the approval of the BPR is requested of the revisions <sup>of</sup> FAS Routes 105, 117 and 119 and FAP Routes 6 and 11 to terminate on the F.A. highway system.

The revised detailed description of F.A. Secondary Route 105 is as follows:

FAS 105 - From a point on F.A.P. 1 (US 1) at the intersection of the Post Road and Wilton Road, in Westport, northwesterly along Conn. 33 to a point of intersection with existing US 7 thence, northerly via existing US 7 to a point of intersection with Conn. 33, 0.3 mile north of Wilton, via Conn. 33, North Wilton to a point on FAP 6 (Conn. 35) 0.6 mile south of Ridgefield; and from another point on FAP 6 (Conn. 35) 0.5 mile north of Ridgefield along Conn. 33 to the Conn. N.Y. S.L. enroute to Brewster, N.Y.

The revised detailed description of FAS 117 is as follows:

FAS 117 - From the New York-Conn. S.L. enroute from Katonah, New York in Ridgefield easterly along Conn. 102 to a point on FAP Route 6 (Conn. 35) in the Village of Ridgefield and from another point on FAP 6 (Conn. 35) 0.4 mile south of Ridgefield via Conn. 102 to a point on US 7 in Branchville in the town of Ridgefield thence via existing US 7 southerly to a point at the intersection of US 7 and FAS 101 (Conn. 57) in the town of Wilton.

The revised detailed description of FAS 119 is as follows:

FAS 119 - From a point on FAP Route 7 (US 6) 1.2 miles east of the Bethel-Newton town line in Newton, northwesterly (along Conn. 25) via Hawleyville and Brookfield Center to a point on existing FAP Route 2 (US 7) in Brookfield; thence southerly via existing US 7 to a point on relocated US 7 in Brookfield.

The revised detailed description of FAP 11 is as follows:

FAP 11 - From a point on FAP Route 2 in New Milford; thence via Kent Road, Main St., East and Poplar Streets in New Milford and via New Preston, Bantam and



Litchfield to Torrington; via New Litchfield Street, Litchfield and East Main Streets, to a point on FAP Route 12 (Conn. Route 4) at the intersection of East Main and East Elm Streets in Torrington.

The revised detailed description of FAP Route 6 is as follows:

FAP 6 - From the Conn.-N.Y. S.L. enroute from South Salem, New York; thence via Litchfield along Conn. Route 35 to a point at the intersection of Conn. 35 and existing US 7 in the town of Ridgefield thence via existing US 7 northerly to a point of intersection with the proposed extension of Starrs Hill Road; thence via Starrs Hill Road to the interchange with relocated FAP Route 2 in the town of Danbury.

	<u>Urban</u>	<u>Rural</u>	<u>Total</u>
Existing official length of FAS 105	2.5	13.3	15.8
Revised " " " " "	<u>2.5</u>	<u>14.6</u>	<u>17.1</u>
Net Mileage	0.0	+1.3	+1.3
Existing official length of FAS 117	0.0	7.1	7.1
Revised " " " " "	<u>0.0</u>	<u>8.0</u>	<u>8.0</u>
Net Mileage	0.0	+0.9	+0.9
Existing official length of FAS 119	0.0	5.8	5.8
Revised " " " " "	<u>0.0</u>	<u>6.5</u>	<u>6.5</u>
Net Mileage	0.0	+0.7	+0.7

The cumulative effect of these revisions to FAS Route 105, 117 and 119 is an increase of 2.9 miles in the F.A. Secondary System.

Existing official length of FAP 11	2.0	23.6	25.6
Revised " " " " "	<u>2.0</u>	<u>23.7</u>	<u>25.7</u>
Net Mileage	0.0	+0.1	+0.1
Existing official length of FAP 6	0.0	5.7	5.7
Revised " " " " "	<u>0.1</u>	<u>5.9</u>	<u>6.0</u>
Net Mileage	+0.1	+0.2	+0.3

The cumulative effect of these revisions to FAP 6 & 11 is an increase of 0.4 mile in the F.A. Primary System.

Concurrences of the appropriate local officials in the towns of Wilton, Ridgefield, Brookfield, New Milford and Danbury have been obtained in compliance with the requirements of Sec. 103(c) of Title 23, US Code 1958, in regard to the above secondary route revisions.

Attached are five copies of a map showing the revisions to F.A. Primary Routes 2, 6 and 11 and FAS Routes 105, 117 and 119 and five copies of the Brief Official Descriptions of these routes.

J. J. McGill  
 J. J. McGill  
 J. J. McGill  
 J. J. McGill - J.J. McGill  
 J. J. McGill - J. J. McGill

*(Signature)*

RR

December 22, 1969

George J. Conkling, Commissioner  
Department of Transportation  
Milford, Connecticut

Edward J. DePina, Division Engineer  
Bureau of Public Roads  
Milford, Connecticut

Federal-Aid Primary and Secondary Route Revisions  
FAP2, 6 and 11; FAS 105, 117 and 119

We <sup>^</sup>approve, effective December 22, 1969, your request of November 28, 1969<sup>^</sup> for the revision of the following Federal-aid Primary and Secondary routes:

<u>Route</u>	<u>Character of Change</u>
FAP 2	Official description change and length increase due to the relocation of the route.
FAP 6 )	Official description change and length increase resulting from changed termini due to the revision of FAP 2.
FAP 11 )	
FAS 105 )	
EAS 117 )	
FAS 119 )	

The mileage for the routes before and after this system revision is as follows:

<u>Route</u>	<u>Rural Mileage Before</u>	<u>Mileage After</u>	<u>Urban Mileage Before</u>	<u>After</u>	<u>Total Mileage Before</u>	<u>After</u>
FAP 2	64.6	64.7	9.4	9.9	74.0	74.6
FAP 6	5.7	5.9	0.0	0.1	5.7	6.0
FAP 11	23.6	23.7	2.0	2.0	25.6	25.7
FAS 105	13.3	14.6	2.5	2.5	15.8	17.1
FAS 117	7.1	8.8	0.0	0.0	7.1	0.0
FAS 119	5.8	6.5	0.0	0.0	5.8	6.5

\*Note: Retyped copy  
(insertions are correct  
Tr. 37)  
FAP 2 is U.S. Route 7  
(Tr. 93-4)

P/s. Ex. RR

- more -



The cumulative effect of these revisions to FAP 2,6 and 11 is an increase of 1.0 mile in the Federal-aid Primary System. The cumulative effect of these revisions to FAS 105, 117 and 119 is an increase of 2.9 miles in the Federal-aid Secondary System.

One copy of the route description form for each revision, dated and signed, is returned for your records.

M.F. Boomer, Division  
Planning and Research Engineer

Enclosures:

MrHough/is 12/22/69  
5- Mr. Conkling  
2-Regional Office  
1- Washington office  
2- File-(primary-secondary)  
1-Day File

Logged out 12/22/69

Pb'Ex. JS

Relocation of Route 7  
Notes for Meeting with  
Lieutenant Governor Hull and State Legislators  
April 15, 1971

Route 7 is an integral part of our planned expressway system for Connecticut, a system which covers the entire State. However, for practical purposes, the Interstate portion of this system takes precedence over our Intrastate system in the assignment of resources for project development.

This is not to say no attention is being given to the development of Route 7 or any of our other needed Intrastate expressway routes; rather that with only limited financial resources and with our Intrastate expressway needs approximately \$2.8 billion, the \$487 million which has been authorized to date for our Intrastate expressway system must be husbanded and programmed with utmost care.

With this thought in mind, we have reviewed the alternatives open to us to facilitate the construction of Route 7 within the constraints of financing while, at the same time, continuing the development of other Intrastate expressways within the amounts of their authorizations. Our financial constraints are twofold; they apply equally to Route 7 as to our other expressway routes:

1. additional bond authorizations are required to complete certain of the projects
2. the limiting amounts to which the Department may request the issuance of bonds—currently no more than \$80 million per year—and the concomitant limitation on the amount that may be expended on bond financed projects per year, including Federal aid. This is presently projected to an average of \$145 million per year for preliminary engineering, rights of way and construction.

Our current bond authorizations for the relocation of Route 7 from the vicinity of Belden Avenue in Norwalk to the vicinity of relocated Route 25 in New Milford, including the section of Route 25 in New Milford from relocated Route 7 to the vicinity of Route 109, amount to \$144.5 million. The 1965 Session, under



Section 3(b), Item 6 of Public Act 325, authorized \$83.5 million for the section from the vicinity of Belden Avenue in Norwalk to north of Silvermine Road in Brookfield. The 1969 Session, under Section 2(b), Item 6 and Section 8, Item 14 of Public Act 755, authorized an additional \$53 million for this same section. The 1969 Session also authorized, under Section 8, Item 8 of Public Act 755, \$8 million for the preliminary engineering and rights of way for the section from Silvermine Road in Brookfield to the vicinity of relocated Route 25 in New Milford, including the section of Route 25 from relocated Route 7 to the vicinity of Route 109. We anticipate \$23.8 million in Federal aid will be available for projects in the section from Belden Avenue to Silvermine Road. The total sum authorized or anticipated available amounts to \$168.3 million.

Contingent on the constraints of financing mentioned previously, our projections of the total cost of this facility to the termini authorized amounts to approximately \$304.2 million. This facility is therefore in deficit in an amount of \$135.9 million, which all the more emphasizes the need for judicious application of resources available.

For the section of Route 7 from the vicinity of Belden Avenue in Norwalk to north of Silvermine Road in Brookfield, we have \$136.5 million in bonding authorized. To this we may add \$23.8 million in Federal aid, making a total of \$160.3 million available or authorized. Our current projections of the cost of this section, considering the constraints of financing, amount to \$226.8 million. This section is therefore in deficit in an amount anticipated to be \$66.5+ million.

Our analysis of the best use of monies available for the construction of this section was predicated on continuing to completion the necessary preconstruction activities of preliminary engineering and rights of way, and finally resolved into two primary alternatives. These were Alternate No. 1, shown in red on the map, by which the construction already underway between Belden Avenue to 0.1 mile north of New Canaan Avenue, Project 102-119, would continue from north of New Canaan Avenue with the project having the interchange with Route 15, Project 102-129, and continue northerly to Olmstead Hill Road in Wilton, the northerly terminus of Project 161-86.

From this point northerly to 0.4 mile south of the Redding-Danbury town line, no funds for construction would be allocated from the present authorization, Projects 161-87 and 117-112. They would, however, be allocated for the section from 0.4 mile south of the Redding-Danbury town line to the vicinity of I-84, Project 164-84. Proceeding northerly, no funds for construction would be allocated from the present authorization for the last project, Project 34-124. The costs of the projects proposed to be constructed under this alternate amount to \$160.3 million. With \$160.3 million available for this section, we balance out. Nevertheless, an extension of the costs in detail indicates a projected deficit of \$29,000. However, recent studies and analysis made for the most expeditious use and distribution of our earthwork and grading quantities may result in a saving of approximately \$3 million. There will be slight adjustments made to project termini because of this.

Under Alternate No. 2, shown in green on the map, we would not allocate from the present authorizations, funds for the construction of the project with that vital interchange with Route 15, Project 102-129, rather we would continue construction from 0.1 mile north of Oakwood Avenue, Project 102-125, to the Wilton-Ridgefield town line, Project 161-87. Under this alternate the limits of this project would be extended northerly to provide for a usable section. As in Alternate No. 1, no funds for construction would be allocated to the section from the Wilton town line to 0.4 mile south of the Redding-Danbury town line, Project 117-112. However, funds would be allocated for the construction of the section from the Redding-Danbury town line to north of Silvermine Road, Projects 116-84 and 34-124. The cost of the projects proposed to be constructed under this alternate amounts to \$153.5 million. Under this alternate, \$166.1 million would be available because of increased Federal aid for Project 161-87. This would leave a balance in the authorization for this section in an amount of \$12.6 million which has to be reserved for Project 102-129 in accord with Section 8, Item 14 of Public Act 755 of 1969.

Insofar as the section of Route 7 from Silvermine Road in Brookfield to the vicinity of relocated Route 25 in New Milford is concerned, only \$8 million was



authorized by the 1969 Session, as stated before, for preliminary engineering and rights of way only. Alternates 1 and 2 are therefore the same. As a result of our projections being based on the limiting amounts available for expenditure each year, this section will require in the future, authorizations in the amount of \$69.4 million.

If it were not for three salient factors, it would appear Alternate 2 provides the best use of our available resources.

The balances in Alternates 1 and 2 and the differences between these balances (\$12.6 million) may have created this impression. However, these balances were created as a consequence of the costs of the mix of projects to be constructed within available resources under each alternate plan. They do not represent a saving, for they must be applied to work still to be done assuming that sometime in the future, additional authorizations for such work will be issued. Therefore, the minimal balance in Alternate 1 reflects the optimum use of our available resources under present conditions.

As a further consequence of the mix of projects under these alternates, \$5.8 million in Federal aid assigned to Project 161-87 in Alternate 2 would not be used in Alternate 1, since in Alternate 1 that project would require additional authorizations in the future. The use of Federal aid on Alternate 2 has increased the total resources available under this plan and accounts for \$5.8 million of the \$12.6 million balance. The fact that this \$5.8 million in Federal aid would not be used on Route 7 under Alternate 1 does not mean this money will be lost to the State; it will be used to share in the cost of other projects in the State.

Another factor to consider is that Alternate 2 does not provide from our available resources funds for the construction of that critical project at the intersection of Route 15 (Project 102-129). It leaves it to future sessions of the Legislature to provide the additional authorizations required and there is no guarantee at the present time this will be done. However, it must be acknowledged that if it were done, the end result would be the same, insofar as the timing of the project is concerned.

The other key point to consider is the fact that, as a requirement of the Federal Aid Highway Act of 1970, all our remaining Interstate projects must be under contract by July 1, 1975. Under the present constraints in the amounts that may be expended on bond financed projects, which no one can predict will be increased or decreased in the future, the expenditures required for projects in the Interstate system may seriously weaken our capabilities for expenditures on our Intrastate projects, in particular during the period 1974 - 1976. When completed, studies now underway will indicate the full extent to which we may have to modify our present financial plan for this and other bond financed routes.

We have concluded, therefore, that we shall proceed with Alternate 1. On the map, both the schedules of operations and finances are shown. As may be seen, our operations capabilities, though they may not be as expeditious as some may desire, far exceed the State's capabilities for financing these projects.



NS VV VV

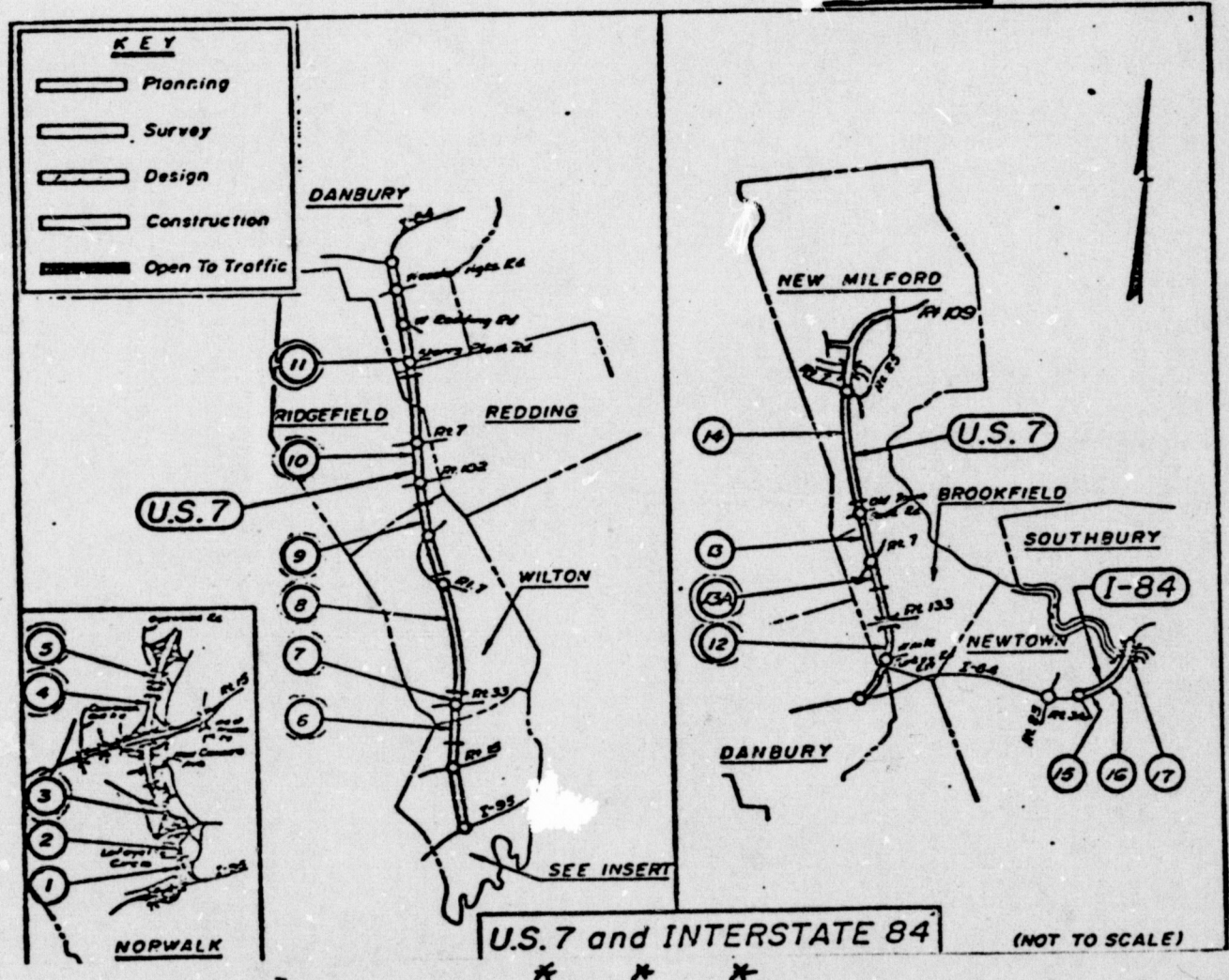
Statutory Reference  
Section      Sub-Div.

Project Description

13a-185(b)	6	From the vic. of Belden Ave. in Norwalk to north of Silvermine Rd. in Brookfield, not exceeding \$123.5 million
13a-198(b)	14	Route 15 in Norwalk from approx. .4 mi. west of Comstock Hill Rd. to approx. .4 mi. east of West Rock Rd., not exceeding \$13.0 million

(in millions)	Funds Avail.	Allocated	Expended	Unalloc. Bal.	Est. Proj. Cost	Add'l Auth. Req'd	Time Alloc. Amnt Need
Bond. Auth.	\$136.5	\$59.5		\$77.0			
Fed. Aid Antic.	<u>28.4</u>	<u>15.3</u>		<u>13.1</u>			
Total to Date	\$164.9	\$74.8	\$46.0	\$90.1	\$234.9	\$70.0	FY 74 - \$65.7 FY 75 - \$57.5 FY 76 - \$36.9

\* incl. Fed. Aid



P/s Ex. VV (abridged)

Prepared By  
 Division of Programming & Scheduling  
 2/26/73

App 45

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

---

CITIZENS FOR BALANCED IMPROVEMENT  
AND TRANSPORTATION, INC.,  
successor in interest of Committee  
to Stop Route 7, et al.,  
Plaintiffs,

v.

Civil Action No. 15,504

BRINEGAR, et al.,  
Defendants.

---

AFFIDAVIT OF ROBERT L. MORRIS

I, Robert L. Morris, of West Bethesda, Maryland, having been duly sworn,  
upon my oath depose and say as follows:

I am the Robert L. Morris who testified on January 29, 1974 in the above-  
entitled matter.

I have caused to be appended hereto, marked "Appendix A", copies of the  
pages from the so-called "Blue Book" of the American Association of State  
Highway Officials (AASHO) to which I will make reference hereinafter. The  
"Blue Book" is generally recognized as the highway engineer's bible, and it  
sets forth in considerable detail, among other things, those criteria of  
traffic volume and need under which traffic engineers make judgments with  
respect to the kind of highways to be constructed. The "Blue Book" is a  
generally acceptable text in this regard throughout the highway engineering  
profession.

I have also caused to be appended hereto, marked "Appendix B", certain  
portions of the "Report on Environmental Considerations Relocated Route 7  
Danbury-New Milford, Connecticut". I call the Court's attention particularly  
to Page I-4. At the trial, I testified that I would not design a four-lane,  
limited access expressway to serve the local traffic needs between Danbury  
and Brookfield. I further testified that, were I charged with designing a  
road sufficient to handle the local traffic volumes between these two towns,  
in my opinion a two-lane facility would be adequate.

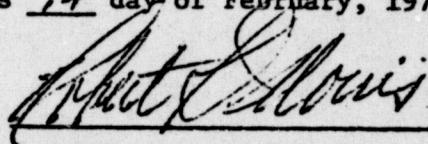
Using the definition of "local traffic" as shown on Page I-4, the link  
between Danbury and Brookfield is shown to have an average daily traffic (ADT)  
of approximately 7500 vehicles. In order to determine the kind of road one



should construct between Danbury and Brookfield to serve only "local traffic" needs in 1990, one would have to ascertain its Design Hourly Volume (DHV). It is a generally accepted rule in the highway engineering profession that DHV is approximately 15% of ADT. Accordingly, the DHV for 1990 between Danbury and Brookfield, based on the ADT for local traffic shown on Page I-4, is approximately 1,100 cars. Using the tables in the AASHO Blue Book (bracketed in red by me) it appears that a two-lane highway would be adequate to serve an 1,100 DHV.

In fact, it is my opinion that a properly designed two-lane facility between Danbury and Brookfield would be adequate to handle efficiently and safely nearly two times the average daily local traffic projected for 1990 between Danbury and Brookfield.

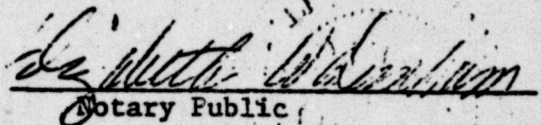
Dated at West Bethesda, Maryland this 14<sup>th</sup> day of February, 1974.



Robert L. Morris

STATE OF MARYLAND  
COUNTY OF MONTGOMERY

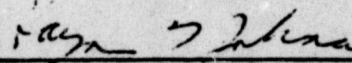
I hereby certify that before me a Notary in and for the State and County aforesaid, personally appeared Robert L. Morris who made oath in the form of law as to the truth of the statements contained in the foregoing affidavit.

  
Notary Public

My commission expires: July 1 1974

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Affidavit of Robert L. Morris was mailed on February 19, 1974, postage pre-paid, to each counsel of record.

  
Haynes N. Johnson

Rec 47

TABLE II-10  
DESIGN CAPACITIES OF 2-LANE, TWO-WAY HIGHWAYS FOR AVERAGE RUNNING  
SPEED OF 35-40 MPH IN VPH

Applicable for 2-lane highways with uninterrupted flow in urban areas and to 2-lane rural highways in mountainous terrain where design for higher running speed is not feasible

Terrain	Alignment: Percentage of total length of highway on which sight distance is restricted to less than 1500 feet*	Design capacity of 2-lane highway, total both directions L=width of lane and T=percentage of trucks, peak hour								
		L=12			L=11			L=10		
		T=			T=			T=		
		0	10	20	0	10	20	0	10	20
Level	0	1500	1300	1160	11-foot lanes not appropriate for high design speed with heavy volume					10-foot lanes not appropriate for high design speed with heavy volume
	20	1450	1260	1120						
	40	1400	1220	1080						
Rolling	20	1450	1030	820	10-foot lanes not appropriate for high design speed with heavy volume					10-foot lanes not appropriate for 60 mph design speed with heavy volume
	40	1400	1000	780						
	60	1350	960	750						
Level	0	2. Design Speed 60 mph								10-foot lanes not appropriate for 60 mph design speed with heavy volume
	20	1500	1300	1160	1290	1120	990			
	40	1410	1230	1080	1210	1050	930			
	60	1320	1150	1020	1140	990	880			
	80	1220	1060	940	1050	910	810			
Rolling	20	1410	1000	790	1210	860	680	10-foot lanes not appropriate for 60 mph design speed with heavy volume		
	40	1320	940	740	1140	810	640			
	60	1220	870	680	1050	750	590			
	80	1110	790	620	950	680	520			
	Mountainous	40	1320	700	480	1140	600		410	
	60	1220	650	440	1050	560	380			
	80	1110	590	400	950	500	340			

Appendix A

APP 48



TABLE II-10 (Cont.)

Level	0 20 40	3. Design Speed 50 mph									
		1450	1260	1120	1040	1250	1080	960	1120	990	860
		1340	1160	1040	930	1150	1000	890	1040	910	800
		1200	1040	930		1040	900	800	930	810	720
Rolling	20	1340	950	750		1150	820	640	1030	730	410
	40	1200	850	670		1040	740	580	930	660	520
	60	1050	750	590		900	640	500	810	580	450
Mountainous	40	1200	640	430		1040	550	380	930	490	330
	60	1050	560	380		900	480	320	810	430	290
	80	900	480	320		770	410	280	700	370	250
Level	0 20 40	4. Design Speed 40 mph									
		1200	1040	930	820	1040	900	800	930	820	720
		1070	930	820	690	920	800	710	820	720	630
		900	780	690		770	670	590	700	610	540
Rolling	20	1070	760	600		920	650	520	820	580	460
	40	900	640	500		770	550	430	700	500	390
	60	720	510	400		620	440	350	560	400	310
		460	330	260		400	280	220	350	250	200
Mountainous	40	900	480	320		770	410	280	700	370	250
	60	720	350	260		620	330	220	560	300	200
	80	460	240	170		400	210	140	350	180	130

\* Sight distance measured from height of eye to road surface, both vertical and horizontal alignment considered.

NOTE: To obtain possible capacity, use values in table for zero sight distance restriction and multiply by 1.33 for 12-foot lanes; 1.36 for 11-foot lanes, and 1.40 for 10-foot lanes.

Tabular values are for conditions with no restrictive lateral clearances; with clearances of less than 6 feet, edge of lane to obstruction, or with shoulders narrower than 6 feet, multiply above values by factor from table II-11.

**Report on**

**ENVIRONMENTAL CONSIDERATIONS  
RELOCATED ROUTE 7  
DANBURY-NEW MILFORD  
CONNECTICUT**

**Prepared for**

**CONNECTICUT DEPARTMENT OF TRANSPORTATION**

**by**

**WILLIAM A. FISHER CO. with**

**HAYDEN, HARDING & BUCHANAN and**

**KNOERLE, BENDER, STONE & ASSOC.**

*"Appendix B"*

**January 1974**



## Population

Population distribution is closely related to existing land use patterns. The 1970 census of population has substantiated the findings made in 1962 that population growth would not justify construction of a highway from New Milford to the Massachusetts line.

## Traffic

Traffic projections are a function of certain land use and population characteristics. Traffic may be classified as through, semi-local or local trips. Connecticut DOT analyzed traffic at selected locations along the Route 7 corridor. The following definitions were utilized for this analysis:

- Through traffic--traffic from outside areas passing through the project corridor towns, using sections of Route 7. Traffic between Norwalk and New Milford, however, was considered through traffic because of the trip length.
- Semi-local traffic--traffic which has one trip-end within the project corridor and the other trip-end beyond the corridor. This category also includes trips with both ends within the study area, but not within the same town or adjoining towns.
- Local traffic--traffic which has both trip-ends within the same town or adjoining towns.

Within the context of these definitions, each link of a proposed highway may have a somewhat different composition of percentages in each traffic category. The link between Danbury and the Brookfield Town line, for example, is projected to carry a 1990 Average Daily Traffic of 29,000 vehicle trips distributed as follows:

<u>Category</u>	<u>Average Daily Traffic</u>	<u>Approx. Per Cent</u>
Semi-local traffic	19,100	65
Local traffic	7,500	26
Through traffic	2,500	9

These figures indicate that the primary purpose of the highway is to serve local and semi-local traffic. Very long north-south trips would be diverted to existing freeways such as the Taconic State Parkway in New York or the north-south portion of Interstates 84 and 91 in Connecticut.

Public transportation is a viable alternative to some highway proposals. It is evident, however, that a vast majority of the trips projected for Relocated Route 7 from Danbury to New Milford cannot be suitably served by rapid mass transportation. This statement is not meant to reflect on the possibility or desirability of improved rail or bus service in the project area, but serves only to point out that public transportation cannot achieve the same transportation objectives as the proposed highway. Also, due to the patterns and intensity of land use development, mass transit systems would be very costly.

### **Physiographic Regions**

The corridor lies astride the Still and Housatonic River valleys. Both valleys, with their abundant water supplies and rich soil; have served as the historical focus for human settlement. These valleys and the surrounding topography, vegetation and soil types are clearly distinct from the land areas north of the project corridor to the State line and also from the region south of Danbury. This is reflected in the boundaries determined for the State's planning regions.<sup>(1)</sup> See Figure 2.

### **Planning Studies**

The Connecticut Highway Department, Division of Planning, studied the project corridor in 1962.<sup>(2)</sup> In 1968, the study was updated; it considered an expanded scope of material and was refined in terms of specific alignment characteristics.<sup>(4)</sup> These studies are summarized in Appendix A and include discussion of the following factors:

- City plans for Brookfield and New Milford
- Reasons for not constructing a freeway north of New Milford
- Demographic and land use factors incorporated into the traffic projections
- USGS maps and in the later study, photogrammetric mapping
- Meetings with public officials and public hearings as well as contact with interested groups and individual citizens



*Connecticut*  
**GENERAL STATUTES**  
**ANNOTATED**

**§ 13a-58. Public hearing on proposed layout.**

When the commissioner of transportation proposes to build any new state highway over any land within the state, if the land to be taken is not along an existing highway, said commissioner shall hold a public hearing at which time he shall set forth the route along which such highway is proposed, giving notice of the time and place of such hearing by publication in a newspaper having a substantial circulation in each town, city or borough affected, at least twice, at intervals of not less than two days, the first not more than fifteen days nor less than ten days and the second not less than two days before such hearing. A copy of the map showing the proposed layout of such highway shall be delivered to the town clerk who shall display such map for public inspection, at least ten days before such hearing, in the office of the clerk of each town, city or borough in which the highway is located. Such public hearing shall be held in some town or city to be selected by the commissioner wherein a majority in area of the land to be taken is located. At such hearing the commissioner shall show the proposed layout and state the reason for the selection of such route, and any persons who are opposed to such layout or route shall be heard and may state their reasons therefor. All expenses of such hearing shall be borne by the department of transportation. Upon the completion of such hearing, a consideration of all the evidence relevant to the selection of such route and the objections thereto shall be made, and said commissioner may make such changes as he deems to be in the public interest. If five years elapses from the date of such hearing and none of the land proposed to be used for such highway has been taken by the state, the commissioner shall hold a new public hearing in the manner provided for in this section.

(1967, P.A. 44, § 1, eff. May 2, 1967; 1969, P.A. 768, § 78; 1971, P.A. 601.)

**§ 13a-59. Designation of limited access highway; illegal entry**

The commissioner, with the advice and consent of the governor and the attorney general, may designate a proposed state highway, or portion thereof, as a limited access highway so as to allow access thereto only at highway intersections or at designated points, when in their opinion such limitation of access would be in the interest of public convenience, safety and necessity. With respect to such highway or portion thereof, the commissioner shall have and exercise all the powers and authority vested in him by statute concerning state highways. Any person who enters a limited access highway at any place other than a highway intersection or designated point as herein provided shall be fined not more than twenty-five dollars. (1963, P.A. 226, § 59; 1963, P.A. 587.)

*Connecticut*  
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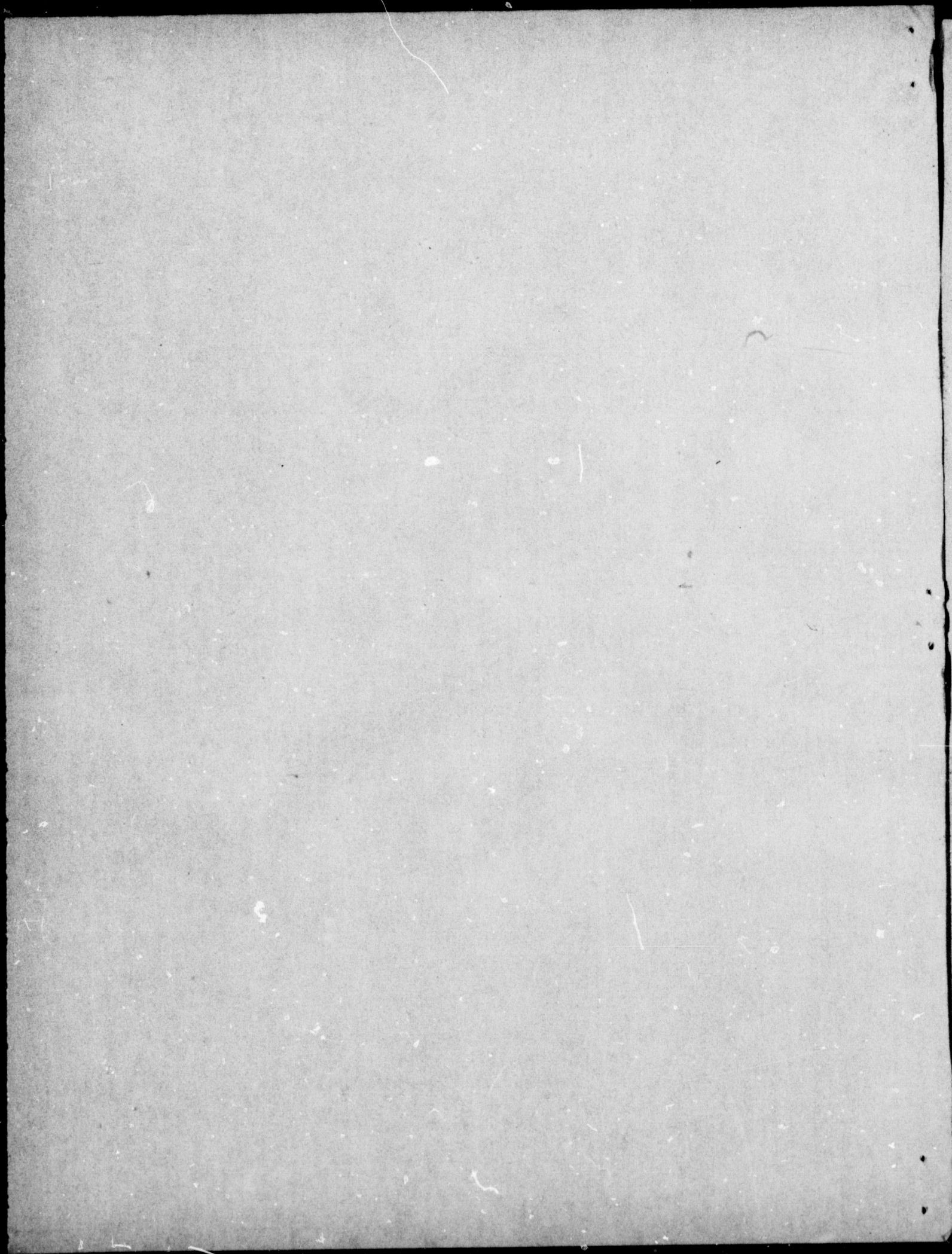


**CONNECTICUT MASTER TRANSPORTATION PLAN 1974**

**Prepared by:**

**CONNECTICUT DEPARTMENT OF TRANSPORTATION  
P. O. DRAWER A - 24 Wolcott Hill Road  
Wethersfield, Connecticut 06109**

**December 1973**





# HIGHWAY

## TWO-LANE AND URBAN STREET IMPROVEMENTS SUGGESTED PROGRAM in Route Number Order

State Proj. No.	Route	Town(s)	Improvement Type	Limits of Improvement	Miles	Thousands of Dollars (Based on 1975 Prices as of 7/1/73)				Fiscal Yr.
						Estimated Total Cost	Available Funds & Auth.	Additional Funds & Auth.	Required	
14-86	1 & 142	Branford	Major widening & intersection realignment	Vic. East Haven TL to vic. Rt. underpass E/O Rt. 142, incl. realignment of Rt. 142 for 0.12 mi.	1.7	1,630	1,630		1,630	1977-1980
105-131	1	Old Saybrook	Replace bridge & approaches	From vic. Silver St. to 0.12 mi. S/O I-95	0.4	2,560	2,092	468	261	1,699 <sup>a</sup> C
152-3-16	1A	Veterford	Major widening	Vic. Rt. 156 to vic. Willette Av.	0.4	1,035		1,035		50 A
51-167/2	4	Farmington	Major widening	Farmington Riv. to W/O I-84 connector	0.9	2,100	90/1	2,010	90	90 A
51-165/2	4	Farmington	Major widening	E/O I-84 connector to W/O I-291	1.8	3,877	148	3,709	148	148 A
49-3-02	5	Enfield	Major widening	Grainard Rd. n'y to Mass. St.	1.0	880		880		(2,010) Y
95-3-04	7	New Milford	Relocation	0.1 mi. S/O Boyford Rd. to S/O Kent TL	2.1	3,265		3,265		(3,709) Y
67-3-02	7	Kent	Realignment	1.42 mi. S/O Rt. 341 n'y	0.5	522		522		(880) Z
141-114	12	Thompson	Relocation	1,400'± S/O Laporte Rd. to 1,200'± S/O Mass. St.	0.9	920	55	865	55	(3,265) Z
108-3-02	14A	Plainfield	Relocation	Via Cemetery Rd.-jct. Cemetery Rd. to Rt. 12	1.2±	1,200		1,200		(522) Z
39-70	20	East Granby	Relocation	No. jct. Rt. 187 to S/O School St.	0.9	1,503	1,505			(865) Y
98-3-03	22	North Branford	Relocation	S/O Rt. 17 to E/O Village St.	0.8	712		712		(1,200) Z
142-3-03	31	Tolland- Coventry	Realignment	Fish & Game Rd. to 0.1 mi. S/O Dunn Rd.	1.8	1,960		1,960		(712) Z
										(1,960) Z

TWO-LANE AND URBAN STREET

<sup>1/2</sup> Regular highway funds  
<sup>2/2</sup> Scope & priority may be revised pending study on withdrawal of I-291

A PE only  
C Const. only  
X PE & RV  
Y RV & Const.  
Z All activities

\* Federal-aid participation proposed on a 70% Federal, 30% State matching basis.